

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DARVIN W. GRAY,

Petitioner,

v.

Case No. 23-CV-049-JFH-GLJ

CARRIE BRIDGES, Warden,

Respondent.

OPINION AND ORDER

On February 9, 2023, Petitioner Darvin W. Gray (“Gray”) filed a “motion for review of a sentence 18 U.S.C.A. § 3742.” Dkt. No. 1. Gray is a pro se state prisoner who is serving two life-without-parole sentences from Muskogee County District Court Case No. 2011-951. *See* Oklahoma DOC Offender website at <https://okoffender.doc.ok.gov>. The Court considered the motion as a challenge to Gray’s state conviction and sentence and construed it as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because Gray did not allege he was serving a federal sentence, 18 U.S.C. § 3742 does not apply to this case.

Gray was directed to file a proper amended § 2254 complaint on the Court’s form by March 2, 2023. Dkt. No. 3. On March 2, 2023, however, he filed an Objection to the Court’s Order to file an amended petition, titled “Judicial Notice: To Petitioner’s Objection to Amend Petition 18 U.S.C. § 3742 Review of Sentence.” Dkt. No. 7. He explained that he was not appealing his conviction, but instead is “questioning the legality and excessiveness of his sentence.” *Id.* at 1. He acknowledges that a § 2254 petition could be deemed second and successive, but he does not know how to avoid dismissal of his claim. *Id.* at 2.

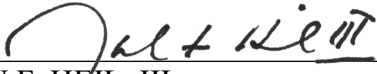
Gray, however, cannot pursue a sentencing claim in his state conviction through 18 U.S.C.A. § 3742, which concerns federal convictions. Instead, any claims regarding his state

conviction or sentence must be presented in a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. *See Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000). The Court will not speculate on whether a § 2254 petition would be denied as second and successive.

IT IS THEREFORE ORDERED that:

1. Gray must submit an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on this Court's form no later than May 15, 2023.
2. The Court Clerk is directed to send Gray a copy of the Court's form for filing an amended § 2254 petition.
3. Failure to comply with this Order will result in dismissal of this action.

Dated this 24th day of April 2023.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE